UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
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DALLAS TX 75202-2733

February 21, 2019

Mr. Efrain Lopez
U.S. Coast Guard (CG-OES-2)
Vessel and Facilities Operating
2703 Martin Luther King, Jr. Avenue S.E.
Washington, DC 20593-7509

Subject: EPA Authority Over Construction and Operation
SPOT Terminal Services LLC Deepwater Port Act Project

Dear Mr. Lopez:

EPA Region 6 received a copy of the Deepwater Port Act (DPA) license application package for Enterprise Products Operating LLC's Sea Port Oil Terminal (SPOT) crude oil export terminal on February 6, 2019, and provides these comments to assist the United States Coast Guard / Maritime Administration (USCG / MARAD) and their contractors as the agencies determine the administrative completeness of the DPA license application package and initiate scoping for the Environmental Impact Statement (EIS) under the DPA and the National Environmental Policy Act (NEPA). The overall project will consist of two distinct, but interrelated components: 1) the offshore component, and 2) the onshore component.

The proposed deepwater port (offshore component) would be located approximately between 27.2 and 30.8 nautical miles off Brazoria County and consists of 2 (two) new 36-inch diameter crude oil pipelines of approximately 46.9 miles in length, which terminate at an offshore staffed platform and control center placed in water depth of approximately 115 feet, two (2) single point mooring (SPM) buoys, four (4) pipeline end manifolds (PLEMs) (2 per SPM buoy), four (4) 30-inch pipelines to deliver crude from the platform to the PLEMS (2 per SPM buoy), and four (4) 16-inch vapor recovery pipelines (2 per PLEM) to transfer recovered vapors from the very large crude carriers (VLCCs) or other crude oil carriers to three (3) vapor combustion units on the platform. The SPM buoy systems would be positioned in water depths of approximately 115 feet and consist of pipeline end manifolds, catenary anchor leg mooring system, and other associated equipment.

The onshore components associated with the proposed project include: addition of measurement skids and electric driven pumps at the existing Enterprise Crude Houston (ECHO) Terminal to supply crude oil to the proposed Oyster Creek Terminal; one (1) 36-inch pipeline connecting the existing ECHO Terminal to the proposed Oyster Creek Terminal (approximately 50.1 miles of new construction), one (1) connection from the existing Rancho II 36-inch pipeline to the ECHO-Oyster Creek pipeline; construction and operation of the Oyster Creek Terminal (approximately 140 acres and include seven (7)

aboveground storage tank, each with 685,000 barrel total capacity), two (2) co-located 36-inch crude oil pipelines from the Oyster Creek Terminal to the proposed shore crossing and deepwater port pipeline infrastructure, and ten (10) mainline valves used to connect the onshore project components to offshore project components.

EPA Region 6 appreciates this opportunity to provide the following information to the Coast Guard and Maritime Administration as part of the coordinated licensing effort for this facility.

We reviewed the SPOT documents and have determined that the applications for EPA Clean Air Act permit actions are administratively complete in that the required EPA forms and certifications were included. We are in ongoing discussions with the company on how to address hazardous air pollutant emissions. There are issues with the Clean Water Act permit application (see below). In addition to the comments below, we reserve the right to request additional information as we more fully examine the permit applications and begin to develop Agency decisions regarding permits for the proposed facility. The NEPA and cross-cutting statutes and regulatory consultation documents need to be sufficient for our use in our regulatory permit actions. EPA would appreciate the opportunity to participate in the consultations as an action agency.

CLEAN WATER ACT. Due to the nature of the delegation of the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permit authority in Texas, EPA Region 6 is the NPDES permitting authority for the project, including onshore and offshore discharges.

The SPOT deepwater port license application received by EPA Region 6 included a copy of the NPDES permit application forms. In accordance with the applicable Environmental Permit Regulations (40 CFR 124.3(c), 54 FR 18785, May 2, 1989), this information was reviewed and determined to be administratively incomplete. During the technical analysis of the application, other deficiencies may be determined and a request for additional or clarifying information will be made to the applicant.

1) According to 40 CFR 122.21(f)(1) and 122.21(f)(1)(8), the facility should provide a brief description of the nature of the business.
2) 40 CFR 122.21(g)(3) and 40 CFR 122.21(g)(4) requires the facility to provide a narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and stormwater runoff; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms. The application Form 2D needs to include detailed process and discharge description.
3) An internal monitoring point, internal Outfall 102 should be established at the sanitary wastewater discharge point prior to commingling with firewater pump and water maker pump at Outfall 002.
4) 40 CFR 122.21(g)(7) requires that the facility provide effluent characteristics from all the Outfalls. Since the facility has not had any discharges, estimated sample results based on Best Professional Judgment for the pollutants listed at 40 CFR 122, Appendix D, Tables III and IV, plus pH, hardness, TDS, TSS, Chloride and Sulfate. These pollutants are also contained in the 2018 EPA-approved Texas Water Quality Standards, Texas Administrative Code (TAC), 30 TAC Sections 307.1 - 307.9, effective November 2, 2018. Estimates of the pollutants believed absent are not required.

5) Volume 1, Appendix C, 3.1, under "Domestic Water and Sanitary Waste" on page 14 of 16 states that "Discharge of residual chlorine must meet a minimum of 1 milligram per liter and shall be maintained as close to this concentration as possible. A grab sample must be taken once per month and the concentration recorded." EPA notes that Total Residual Chlorine (TRC) is toxic at measurable amounts and the effluent shall contain NO MEASURABLE TRC at any time. NO MEASURABLE will be defined as no quantifiable level of TRC as determined by any approved method established in 40 CFR 136 that is greater than the established Minimum Quantification Limit or MQL.

Because the Deepwater Port Act (DPA) designates the proposed type of facility a "new source" for CWA purposes, EPA will consider the information in the MARAD/Coast Guard's EIS and consultation documents in its NPDES permit action in accordance with CWA § 511(c)(1) and DPA § 5(f). Of particular interest will be the conclusion of consultations with the National Marine Fisheries Service and/or U.S. Fish and Wildlife Service for compliance with the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act; including effects on fish, shellfish, and threatened and endangered species, in all life stages, caused by the construction and operation of the facility. EPA is also intending to reply on the consultations with Advisory Council on Historic Preservation and the Texas Historical Commission for compliance with the National Historic Preservation Act.

CLEAN AIR ACT. EPA does not normally administer the Clean Air Act (CAA) in the western Gulf of Mexico because under CAA Section 328, the Department of Interior's Bureau of Ocean Energy Management is responsible for regulating outer continental shelf (OCS) sources, as defined by the Outer Continental Shelf Lands Act, in that area. As presented in the application, the proposed source is not an OCS source, so Section 328 does not apply. Instead, EPA is the CAA permitting authority for non OCS sources in federal waters. EPA regards a provision of the DPA, 33 U.S.C. § 1501, *et seq*, as the primary source of its authority to apply the CAA to activities associated with deepwater ports. The DPA applies federal law and applicable State law to deepwater ports, and further designates deepwater ports as "new sources" for CAA purposes. Accordingly, for the source's pre-construction and operating permits, EPA will rely on the provisions of Title 1 and Title V of the CAA, supporting applicable regulations and on the state's law to the extent applicable and not inconsistent with federal law. EPA will also consider the information in the MARAD / Coast Guard's EIS and consultation documents in its CAA permit actions, and in particular will rely on the MARAD / Coast Guard's consultations with the National Marine Fisheries Service and/or U.S. Fish and Wildlife Service for compliance with the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act as well as consultations with the Advisory Council on Historic Preservation and the Texas Historical Commission for compliance with the National Historic Preservation Act.

The applicant asserted that the nearest adjacent coastal state to the operation is Texas, based on the location of the terminal. EPA concludes that, in accordance with Section 19 of the DPA, the applicable state laws and regulations governing air quality at SPOT are those of Texas.

While we have received a PSD and Title V permit application from Enterprise Products, we are in ongoing discussions with the company regarding how to best address hazardous air pollutant emissions as an offshore crude export facility. We will have to work through this issue with the company before we begin the permitting process.

We have not completed our review of the technical information in the permit applications or the supporting modeling analysis included in *Appendices F and H* of the DWP License application for technical completeness. However, we have completed a preliminary review for administrative completeness. In EPA's preliminary review, the air permit related application materials appear to generally include regulatorily required administrative information. After EPA completes its technical review of the applications, additional technical information may be requested in writing or though meetings with the applicant. At this point in EPA's review, we believe that the applications, with the exception of the missing case-by-case MACT determination request, are administratively complete. We reserve the right to inform the applicant that their air permit related applications are technically incomplete pursuant to each set of CAA implementing regulations the applicant has applied under.

MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT. Under Section 101 of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), 33 U.S.C. § 1401, no person may transport material from the United States or on an American flagged vessel for the purpose of dumping it in ocean waters in the absence of a permit issued by EPA pursuant to MPRSA § 102. A MPRSA §102 permit is also required for any person transporting material from anywhere for the purpose of dumping it in the territorial seas or to the contiguous zone where it might affect the territorial seas.

Based on our current understanding, it does not appear that this proposal includes transporting materials for the purpose of dumping it in connection with the construction or operation of the SPOT facility. Moreover, "dumping" does not include "construction of any fixed structure or artificial island nor the intentional placement of any device in ocean waters, or on or in the submerged land beneath such waters, for a purpose other than disposal, when such construction or such placement is otherwise regulated by Federal or state law . . ." MPRSA § 3(f). The construction of this deepwater port appears to fall within this statutory exclusion. However, if this understanding is not correct or if dredged materials associated with the construction/placement of the offshore platform, SPM facilities and pipelines require disposal, MRPSA Sections 101 and 103 may apply, as well as provisions of the Clean Water Act.

Also, if you should need further information about the Region 6 program for Ocean Disposal, please feel free to visit our website at: https://www.epa.gov/ocean-dumping/managing-ocean-dumping-epa-region-6 or an overview of the entire program nationally at: https://www.epa.gov/ocean-dumping

COASTAL AND WETLAND RESOURCES. As we currently understand the project, it would involve the construction and operation of an onshore storage terminal facility (OSTF) occupying approximately 145 acres at Oyster Creek, connecting inbound pipeline from the existing ECHO Terminal of approximately 50 miles of new construction; approximately 12.1 miles of two (2) new 36-inch diameter pipelines and onshore valves used to connect the onshore project components to offshore project components; and two (2) approximately 49.7 miles of new 36-inch outside diameter crude oil pipelines, which terminate at an offshore staffed platform and control center. Separate 42-inch outside diameter crude oil pipelines will extend from the offshore platform to two (2) single point mooring (SPM) buoys, each with two (2) 24-inch floating loading hoses. The SPM buoy system would be positioned in water depths of approximately 115 feet and consist of a pipeline end manifold, catenary anchor leg mooring system, and other associated equipment.

These project components, taken individually and considered cumulatively, could have significant impacts to vital coastal and wetland resources. Therefore, all necessary measures should be taken to avoid such impacts to the degree possible and to mitigate or compensate for those that cannot be

avoided. Beyond compliance with the National Environmental Policy Act and the Clean Water Act, there is also a need to ensure that the proposed project is consistent with federal and State efforts to restore coastal resources. Accordingly, all practicable efforts should be taken to ensure that the proposed project does not conflict with reasonably foreseeable future restoration efforts in the proposed project area. Special attention should be given to alternative plans currently being analyzed as part of the Texas Coastal Restoration and Protection Feasibility Study (U.S. Army Corps of Engineers), the Texas Coastal Resiliency Master Plan (Texas General Land Office), and any proposed projects under the Deepwater Horizon Natural Resource Damage Assessment and RESTORE Act programs.

The impacts from the construction, operation and maintenance of the deepwater port and its ancillary facilities, including dredging and any projected impacts to wetlands and special aquatic sites (including seagrass beds), are of particular interest to us and should be analyzed in the draft Environmental Impact Statement (EIS). A thorough evaluation should be presented in the draft EIS that demonstrates planning efforts to avoid, minimize, and compensate for wetland and special aquatic site losses associated with the construction, operation and maintenance of the proposed project. Impacts to aquatic resources and wetlands should include direct, indirect and cumulative effects reasonably associated with the proposed project. Along with the Clean Water Act Section 404 (b)(1) analysis, all unavoidable direct and indirect impacts would need to be compensated. We recommend that an aquatic resource and wetland mitigation plan, consistent with the 2008 Final Rule for Compensatory Mitigation for Losses of Aquatic Resources, be included within the draft EIS. Please note that providing this material after public review of the draft EIS does not allow optimum analysis of the entire range of significant potential environmental impacts.

In addition, the draft EIS should address any other projected marine and coastal natural resource impacts such as losses of habitat important to resident and migratory shorebirds and sea turtles, the introduction of invasive species, bottom scour and benthic community impacts from the mooring system, and marine pollution issues.

NATIONAL ENVIRONMENTAL POLICY ACT. EPA Region 6 desires to be a cooperating agency in the development of the EIS by MARAD and USCG. A formal invitation letter for cooperating agency status should be addressed to the Region 6 NEPA program to the attention of Robert Houston. Additionally, Section 309 of the Clean Air Act requires EPA to review EISs prepared by other agencies.

MARAD/USCG should submit the EIS to EPA through the e-NEPA electronic filing system. Filing instructions are available on EPA's NEPA website at https://www.epa.gov/nepa/environmental-impact-statement-filing-guidance

Please provide an additional copy of both draft and final EISs to EPA Region 6 for consideration in its NPDES permit action.

POINT OF CONTACT. I will be the primary EPA point of contact for communications on the SPOT project. Correspondence should be directed to me as follows:

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Once again, EPA Region 6 looks forward to working with the Coast Guard and Maritime Administration on this project.

Sincerely yours,

Robert D. Lawrence
Senior Policy Advisor - Energy Issues

cc: Ms. Kimberly Baggette
U.S. Army Corps of Engineers, Galveston, TX

Ms. Terri Thomas
Bureau of Ocean Energy Management, New Orleans, LA

Dr. Roy E. Crabtree
NOAA National Marine Fisheries Service, St. Petersburg, FL

Mr. Chuck Ardizzone
U.S. Fish & Wildlife Service, Houston, TX

Ms. Yvette Fields
Maritime Administration, Washington, DC

Mr. A. James Teague, CEO
SPOT Terminal Services LLC, Houston, TX